IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

MONDAY, THE 5TH NOVEMBER 2007 / 14TH KARTHIKA 1929

WP(C).No. 29866 of 2007(E)

PETITIONER:

M/S. WIMROCK GRANITE (P) LTD.,
WIMROCK BHAVAN, THEKKUMMALA, VADASSERIKKARA P.O.,
PATHANAMTHITTA, PIN-689 662, REP. BY ITS
MANAGING DIRECTOR RAJU K.THOMAS,
KODAYATTUMARUTHIVELIL HOUSE, THADIYOOR P.O.,
RANNI, PATHANAMTHITTA.

BY ADV. SRI.K.BABU THOMAS

RESPONDENTS:

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1. UNION OF INDIA, REP. BY THE
GENERAL MANAGER, SOUTHERN RAILWAY,
SOUTHERN RAILWAY HEAD QUARTERS OFFICE,
CHENNAI-600 003.

2. THE CHIEF ENGINEER (CONSTRUCTION),
SOUTHERN RAILWAY, THYCAUD P.O., TRIVANDRUM-14.

BY ADV. SMT.A.RAJESWARI, SC, RAILWAYS

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 05/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC, J.

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W.P.(C) No. 29866 OF 2007 E
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Dated this the 5th November, 2007

J U D G M E N T

Petitioner had responded to Ext. P1 tender notice. According to him, he is entitled to be pre-qualified for awarding the work. The whole controversy raised in this writ petition depends upon the claim for acceptance of the experience claimed by the petitioner.

2. The relevant clause in Ext. P1 tender notice is clause 9(2) which provides as follows:

> "Certificate from private individuals for whom such works are executed/being executed should not be accepted."

Petitioner submitted Ext. P3 and would contend that the said certificate, certifies his eligibility and therefore accepting the said certificate, the tender submitted by him is liable to be accepted.

3. Ext. P3 is a certificate issued by M/s. PATI – BEL JV which states about the supplies the petitioner had made to that company. Petitioner would contend that the aforesaid clause 9(2) only enables the

respondents not to accept certificates issued by private individuals and since Ext. P3 is a certificate issued by a joint venture company his eligibility is liable to be accepted.

4. In my view, the petitioner is not justified in its contention. Clause 9(2) provides that certificate from private individuals will not be accepted. The term 'private individual' mentioned in clause 9(2) necessarily takes in private companies as well. Petitioner has no case that Ext. P3 has been issued by a public sector undertaking. On the other hand, he only contends that it is a joint venture floated by the Malayasian Government. In the Indian context a public sector undertaking does not include a company floated by a foreign government, but only includes a company with the participation of any one of the State Governments or the Central Governments of the Indian Union alone.

5. This inference of mine is supported by clause 6.2 which provides that with respect to other Government Departments and Public Sector Undertakings, the certificate issued at the level of Executive

Engineer and above can be taken as valid. This provision does not provide for a certificate for a private company. Therefore, exclusion of private individuals takes in not only the individuals but also undertakings other than Government Departments and Public Sector Undertakings.

6. In my view the petitioner does not satisfy the eligibility prescribed in Ext. P1 tender notice and therefore if the respondents have refused to accept Ext. P3 they cannot be faulted for the said action.

Writ petition fails and is dismissed.

ANTONY DOMINIC
JUDGE

jan/-